

THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

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| UNITED STATES OF AMERICA | : | |
| | : | |
| v. | : | Criminal No. 16-30 Erie |
| | : | |
| RICK WEAVER BUICK GMC, INC. | : | |
| ADAM JAMES WEAVER | : | |
| DOUGLAS ALAN GROOMS | : | |
| ADAM BRAYTON COOVER | : | |

PROPOSED POINTS FOR CHARGE SUBMITTED ON
BEHALF OF DEFENDANT, RICK WEAVER BUICK, GMC, INC.

RICK WEAVER BUICK, GMC, INC., by and through its counsel, MICHAEL A. AGRESTI, ESQUIRE, files the following Points of Charge from the Model Third Circuit Criminal Instructions, and in support thereof, states as follows:

3.06 Presumption of Innocence; Burden of Proof; Reasonable Doubt

The Defendant, Rick Weaver Buick GMC, INC., ("Rick Weaver Buick") pleaded not guilty to the offenses charged. Rick Weaver Buick is presumed innocent. Rick Weaver Buick started the trial with a clean slate, with no evidence against it. The presumption of innocence stays with Rick Weaver Buick unless and until the Government has presented evidence that overcomes that presumption by convincing you that Rick Weaver Buick is guilty of the offenses charged beyond a reasonable doubt. The presumption of innocence requires that you find Rick Weaver Buick not guilty, unless you are satisfied that the Government has proved guilt beyond a reasonable doubt.

The presumption of innocence means that Rick Weaver Buick has no burden or obligation to present any evidence at all or to prove that it is not guilty. The burden or obligation of proof is on the Government to prove that Rick Weaver Buick is guilty and this burden stays with the

Government throughout the trial.

In order for you to find Rick Weaver Buick guilty of the offenses charged, the Government must convince you that Rick Weaver Buick is guilty beyond a reasonable doubt. That means that the Government must convince you that Rick Weaver Buick is guilty beyond a reasonable doubt. A defendant may not be convicted based on suspicion or conjecture, but only on the evidence proving guilt beyond a reasonable doubt.

Proof beyond a reasonable doubt does not mean proof beyond all possible doubt or to a mathematical certainty. Possible doubts or doubts based on conjecture, speculation or hunch are not reasonable doubts. A reasonable doubt is a fair doubt based on reason, logic, common sense or experience. It is a doubt that an ordinary reasonable person has after carefully weighing all of the evidence, and is a doubt of the sort that would cause him or her to hesitate to act in matters of importance in his or her own life. It may arise from the evidence, or from the lack of evidence, or from the nature of the evidence.

If, having now heard all of the evidence, you are convinced that the Government proved each and every element of the offense charged beyond a reasonable doubt, you should return a verdict of guilty for that offense. However, if you have a reasonable doubt about one or more of the elements of the offense charged, then you must return a verdict of not guilty of that offense.

3.07 Nature of Indictment

As you know, the defendant, Rick Weaver Buick GMC, INC., is charged in the Indictment with violating Federal law; specifically, that Rick Weaver Buick was involved in a criminal conspiracy to knowingly devise a scheme to defraud or to obtain money or property. As I explained at the beginning of trial, an Indictment is just the formal way of specifying the exact crimes the defendant is accused of committing. An Indictment is simply a description of the

charges against the defendant. It is an accusation only. An Indictment is not evidence of anything, and you should not give any weight to the fact that Rick Weaver Buick has been indicted when making your decision in this case.

I. 3.14 Separate Consideration - Multiple Defendants Charged with the Same Offenses

The defendants, Adam James Weaver and Rick Weaver Buick GMC, INC., are charged with the offenses of Wire Fraud and Criminal Conspiracy; each offense is charged in a separate count of the Indictment. The number of offenses charged is not evidence of guilt, and this should not influence your decision in any way. Also, in our system of justice, guilt or innocence is personal and individual. You must separately consider the evidence against each defendant on each offense charged, and you must return a separate verdict for each defendant on each offense. For each defendant and offense, you must decide whether the Government has proved beyond a reasonable doubt that the particular defendant is guilty of the particular offense.

Your decision on any one defendant or any one offense, whether guilty or not guilty, should not influence your decision on any of the other defendants or offenses. Each offense and each defendant should be considered separately.

II. Final Instruction, Considerations of Particular Kinds of Evidence

4.08 – Opinion Evidence (Expert Witness)

The rules of evidence ordinarily do not permit witnesses to state their own opinions about important questions in a trial, but there are exceptions to these rules.

In this case, you heard testimony from Jay Goldman. Because of his knowledge, skill, experience, training or education in the fields of banking and lending institutions and the automobile sales industry, Mr. Goldman was permitted to offer an opinion in those areas and the reasons for that opinion.

The opinions this witness stated should receive whatever weight you think appropriate, given all the other evidence in the case. In weighing this opinion testimony, you may consider the witness' qualifications, the reasons for the witness' opinions, and the reliability of the information supporting the witness' opinions, as well as other facts discussed in these instructions for weighing the testimony of witnesses. You may disregard the opinions entirely if you decide that Mr. Goldman's opinions are not based on sufficient knowledge, skill, experience, training or education. You may also disregard the opinions if you conclude that the reasons given in support of the opinions are not sound, or if you conclude that the opinions are not supported by the facts shown by the evidence, or if you think that the opinions are outweighed by the other evidence.

4.09 – Opinion Evidence (Lay Witnesses) (F.R.E. 701)

Witnesses are not generally permitted to state their personal opinions about important questions in a trial. However, a witness may be allowed to testify to his or her opinion if it is rationally based on the witness' perception and is helpful to a clear understanding of the witness' testimony or to the determination of a fact in issue.

In this case, I permitted _____ to offer his or her opinion based on his perceptions. The opinion of this witness should receive whatever weight you think appropriate, given all the other evidence in the case and the other factors discussed in these instructions for weighing and considering whether to believe the testimony of witnesses.

4.18 – Credibility of Witnesses – Law Enforcement Officer

You have heard the testimony of a law enforcement officer. The fact that a witness is employed as a law enforcement officer does not mean that his testimony necessarily deserves more or less consideration or greater or lesser weight than that of any other witness. At the same time, it is quite legitimate for defense counsel to try to attack the believability of a law enforcement

witness on the ground that his/her testimony may be colored by a personal or professional interest in the outcome of the case. You must decide, after reviewing all the evidence, whether you believe the testimony of the law enforcement witness and how much weight, if any, it deserves.

4.19 – Credibility of Witnesses – Witness Who Has Pleaded Guilty to Same or Related Offense, Accomplices, Immunized Witnesses, Cooperating Witnesses

You have heard evidence that D.G. and A.C. each are alleged co-defendants, someone who says he participated in the crime charged; and has made a plea agreement with the Government; and/or received a benefit from the Government in exchange for testifying.

Their testimony was received in evidence and may be considered by you. The Government is permitted to present the testimony of someone who has received a plea bargain from the Government in exchange for his testimony, but you should consider the testimony of D.G. and A.C. with great care and caution. In evaluating their testimony, you should consider this factor along with others I have called to your attention. Whether or not their testimony may have been influenced by the plea bargain is for you to determine. You may give their testimony such weight as you think it deserves.

In evaluating their testimony with great care and caution, you should also determine whether there is evidence which corroborates their testimony. If that corroborating evidence is insufficient, you may determine that their testimony is not trustworthy, and should not be relied upon in determining whether the Government has met its burden of proof beyond a reasonable doubt.

See, e.g., *U.S. v. Isaac*, 134 F.3d 199, 204-205 (3d Cir. 1998)

You must not consider D.G.'s and A.C.'s guilty plea as any evidence of Rick Weaver Buick's guilt. Each of their decisions to plead guilty was a personal decision about his own guilt. Such evidence is offered only to allow you to access the credibility of the witness; to eliminate any

concern that Rick Weaver Buick has been singled out for prosecution; and to explain how the witness came to possess detailed first-hand knowledge of the events about which he testified. You may consider D.G.'s and A.C.'s guilty plea only for these purposes.

4.22 – Impeachment of Witness-Prior Inconsistent Statement for Credibility Only

You have heard the testimony of certain witnesses. You have also heard that before this trial that certain witnesses made statements that may be different from their testimony in this trial. It is up to you to determine whether the statements were made and whether they were different from the witness' testimony in this trial. These earlier statements were brought to your attention only to help you decide whether to believe the witness' testimony here at trial. You cannot use it as proof of the truth of what the witness said in the earlier statements. You can only use it as one way of evaluating the witness' testimony in this trial.

You also heard evidence that certain witnesses made statements before this trial that were sworn testimony; e.g., made under oath, such as at a deposition or given before the grand jury and that may be different from his/her testimony at trial. When a statement is made under oath, you may not only use it to help you decide whether you believe the witness' testimony in this trial but you may also use it as evidence of the truth of what the witness(es) said in the earlier statements. But when a statement is not made under oath, you may use it only to help you decide whether you believe the witness' testimony in this trial and not as proof of the truth of what the witness said in the earlier statements.

4.23 – Impeachment – Bad Character for Truthfulness (F.R.E. 608(a))

Reputation evidence: You heard evidence concerning the reputation for untruthfulness of D.G. and A.C. You may consider this evidence in deciding whether or not to believe D.G. and A.C. You should give this evidence whatever weight you decide is appropriate.

4.24 – Impeachment of Witness – Prior Bad Acts (F.R.E. 608(b))

You heard evidence that A.C. committed other prior bad acts that led to unrelated criminal charges. You may consider this evidence, along with other pertinent evidence, only in deciding whether to believe A.C. and how much weight to give his testimony.

4.25 – Impeachment of Witness – Prior Conviction (F.R.E. 609)

You heard evidence that D.G., a witness, was previously convicted of crimes involving Theft and Fraud. You may consider this evidence, along with other pertinent evidence, in deciding whether or not to believe D.G. and how much weight to give to his testimony.

4.26 – False in One, False in All (Falsus in Uno, Falsus in Omnibus)

If you believe that a witness knowingly testified falsely in concerning any important matter, you may distrust the witness' testimony concerning other matters. You may reject all of the testimony or you may accept such parts of the testimony that you believe are true and give it such weight as you think it deserves.

4.27 – Defendant's Choice Not to Testify or Present Evidence

Rick Weaver Buick did not testify in this case. A defendant has an absolute constitutional right not to testify. The burden of proof remains with the prosecution throughout the entire trial and never shifts to the defendant. The defendant is never required to prove that he is innocent. You must not attach any significance to the fact that Rick Weaver Buick did not testify. You must not draw any adverse inference against Rick Weaver Buick because it did not take the witness stand. Do not consider, for any reason at all, the fact that Rick Weaver Buick did not testify. Do not discuss that fact during your deliberations or let it influence your decision in any way.

4.28 – Defendant's Testimony

In a criminal case, the defendant has a constitutional right not to testify. However, if he

chooses to testify, he is, of course, permitted to take the witness stand on his own behalf. In this case, Rick Weaver Buick testified. You should examine and evaluate his testimony just as you would the testimony of any witness.

4.39 – Defendant’s Character Evidence

You have heard testimony that a defendant has a good reputation in his community for being honest and truthful. You may consider such evidence, along with all other evidence in the case, in reaching your verdict. Evaluate such character evidence, along with all of the other evidence in this case, in deciding whether the Government has proved the crime charged beyond a reasonable doubt.

III. Chapter 6 – Final Instructions – Elements of Offenses

6.18.371C Conspiracy – Existence of an Agreement

The first element of the crime of Conspiracy is the existence of an agreement. The Government must provide beyond a reasonable doubt that two or more persons knowingly and intentionally arrived at a mutual understanding or agreement, either spoken or unspoken, to work together or to achieve the overall objective of the conspiracy, to commit Wire Fraud.

The Government does not have to provide the existence of a formal or written agreement, or an express oral agreement spelling out the details of the understanding. The Government also does not have to provide that all the members of the conspiracy directly met, or discussed between themselves their unlawful objectives or agreed to all the details or agreed to what the means were by which the objectives would be accomplished. The Government is not even required to prove that all the people named in the Indictment were, in fact, parties to the agreement, or that all members of the alleged conspiracy are even known. What the Government must prove beyond a reasonable doubt is that two or more persons in some way or manner arrived at some type of

agreement, mutual understanding or meeting of the minds to try to accomplish a common and unlawful objective.

You may consider both direct evidence and circumstantial evidence in deciding whether the Government has proved beyond a reasonable doubt that an agreement or mutual understanding existed. You may find the existence of a conspiracy based on reasonable inferences drawn from the actions and statements of the alleged members of the conspiracy, from the circumstances surrounding the scheme, and from the evidence of unrelated facts and circumstances which prove that the activities of the participants in a criminal venture could not have been carried out except as the result of a reconceived agreement, scheme or understanding.

6.18.371D Conspiracy – Membership in the Agreement

If you find that a criminal agreement for conspiracy existed, then in order to find Rick Weaver Buick guilty of conspiracy, you must also find that the Government proved beyond a reasonable doubt that Rick Weaver Buick knowingly and intentionally joined that agreement or conspiracy during its existence. The Government must prove that Rick Weaver Buick knew the goal or objective of the agreement or conspiracy and voluntarily joined it during its existence, intending to achieve the common goal or objective and to work together with the other alleged conspirators toward that goal or objective.

The Government need to prove that Rick Weaver Buick knew everything about the conspiracy or that it knew everyone involved in it, or that it was a member from the beginning. The Government also does not have to prove that Rick Weaver Buick played a major or substantial role in the conspiracy.

You may consider both direct evidence and circumstantial evidence in deciding whether Rick Weaver Buick joined the conspiracy, knew of its criminal objective, and intended to further

the objective. Evidence which shows that Adam Weaver only knew about the conspiracy, or only kept “bad company” by associating with members of the conspiracy, or was only present when it was discussed or when a crime was committed, is not sufficient to prove that Rick Weaver Buick was a member of the conspiracy even if Rick Weaver Buick approved of what was happening or did not object to it. Likewise, evidence showing that Rick Weaver Buick may have done something that happened to help a conspiracy does not necessarily prove that he joined the Conspiracy. **Also, you must not infer Rick Weaver Buick’s knowledge of the conspiracy or any involvement in one if it did exist merely because Adam Weaver was the overall manager of the company and a supervisor of D.G.** You may, however, consider this evidence, with all the other evidence, in deciding whether the Government proved beyond a reasonable doubt that Rick Weaver Buick joined the conspiracy.

6.18.371E Conspiracy – Mental States

In order to find Rick Weaver Buick guilty of conspiracy, you must find that the Government proved beyond a reasonable doubt that Rick Weaver Buick joined the conspiracy knowing of its objective and intending to help further or achieve that objective. That is, the Government must prove: (1) that Rick Weaver Buick knew of the objective or goal of the conspiracy, (2) that Rick Weaver Buick joined the conspiracy intending to help further or achieve that goal or objective, and (3) that Rick Weaver Buick and at least one other alleged conspirator shared a unity of purpose toward that objective or goal.

You may consider both direct evidence and circumstantial evidence, including Adam Weaver’s words or conduct and other facts and circumstances, in deciding whether Rick Weaver Buick had the required knowledge and intent.

6.18.371F Conspiracy – Overt Acts

With regard to the fourth element of conspiracy – overt acts – the Government must prove beyond a reasonable doubt that during the existence of the conspiracy, at least one member of the conspiracy performed at least one of the overt acts described in the Indictment, for the purpose furthering or helping to achieve the objective of the conspiracy.

The Indictment alleges certain overt acts. The Government does not have to prove that all of these acts were committed or that any of these acts were themselves illegal. Also, the Government does not have to prove that Rick Weaver Buick committed any of the overt acts. The Government must prove beyond a reasonable doubt that at least one member of the conspiracy committed at least one of the overt acts alleged in the Indictment and committed it during the time that the conspiracy existed, for the purpose of furthering or helping to achieve the objective of the conspiracy. You must unanimously agree on the overt act that was committed.

6.18.371G Conspiracy – Success Immaterial

The Government is not required to prove that any of the members of the conspiracy were successful in achieving any or all of the objectives of the conspiracy. You may find Rick Weaver Buick guilty of conspiracy if you find that the Government proved beyond a reasonable doubt the elements I have explained, even if you find that the Government did not prove that any of the conspirators actually committed Wire Fraud. Conspiracy is a criminal offense separate from the offenses that were objectives of the conspiracy; conspiracy is complete without the commission of those offenses.

6.18.1343-2 Wire Fraud – Elements of the Offense (18 U.S.C. §1343)

Counts 2-13 of the Indictment charge the defendant, Rick Weaver Buick, with wire fraud, which is a violation of federal law.

In order to find the defendant guilty of these offenses, you must find that the Government

proved each of the following three elements beyond a reasonable doubt:

First: That Rick Weaver Buick knowingly devised a scheme to defraud or to obtain money or property by materially false or fraudulent pretenses, representations or promises.

Second: That Rick Weaver Buick acted with the intent to defraud; and

Third: That in advancing , furthering or carrying out the scheme, Rick Weaver Buick transmitted any writing, signal or sound by means of a wire, radio or television communication in interstate commerce or caused the transmission of any writing, signal or sound of some kind by means of a wire, radio or television communication in interstate commerce.

7.06 Corporate Criminal Responsibility

A corporation is a legal entity that may act only through individuals who are called its agents. The agents of a corporation are its officers, directors, employees, and other persons who are authorized by the corporation to act for it.

You must give to a corporate defendant the same impartial consideration of the evidence that you would give to an individual defendant. You may find a corporate defendant guilty or not guilty of the offense charged under the same instructions that apply to an individual.

The legal responsibility of a corporation, if any, is based on the conduct of its agents. In this case, the government alleges that those agents were Douglas Grooms and/or Adam Weaver.

To find Rick Weaver Buick guilty of wire fraud, as charged in Counts 1 through 12 of the indictment, you must find that the government proved beyond a reasonable doubt each of the following three (3) requirements:

First: That each of the elements of wire fraud was committed by an officer, director, employee, or other agent of Rick Weaver Buick. I (have explained in these instructions the elements of wire fraud.

Second: That each of the acts committed by Douglas Grooms and/or Adam Weaver were within the course and scope of the employment or agency given to Douglas Grooms and/or Adam Weaver by Rick Weaver Buick; and

Third: That Douglas Grooms and/or Adam Weaver committed each of these acts with the intent to benefit Rick Weaver Buick.

In order to find that an act was committed within the course and scope of the employment or agency given to Douglas Grooms and/or Adam Weaver, the evidence must prove that the act related directly to the general duties that Douglas Grooms and/or Adam Weaver was expected to perform by Rick Weaver Buick. However, the government does not need to prove that the act was authorized by Rick Weaver Buick formally or in writing.

Respectfully submitted,

MARSH SPAEDER BAUR SPAEDER & SCHAAF, LLP

BY: s/Michael A. Agresti, Esquire
Michael A. Agresti, Esquire
300 State Street, Suite 300
Erie, Pennsylvania 16507
(814) 456-5301

Attorney for Defendant, Rick Weaver
Buick GMC, INC.